

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HEIDI KELLERHALS,

Plaintiff,

v.

MAIRA RUELAS, et al.,

Defendants.

No. 1:20-cv-01279-EPG

ORDER CONCERNING NOTICE FOR  
VOLUNTARY DISMISSAL

(ECF No. 34)

On April 14, 2021, Plaintiff Heidi Kellerhals filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). (ECF No. 34). Because Defendants have filed an answer, (ECF No. 17), and did not stipulate to the voluntary notice, a plaintiff may dismiss this case under Rule 41(a) only upon with Defendants' stipulation, Fed. R. Civ. P. 41(a)(1)(A)(ii), or upon a motion and court order, *id.* 41(a)(2). *Accord Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th Cir. 1997) ("Once the defendant serves an answer or a motion for summary judgment, however, the plaintiff may no longer voluntarily dismiss under Rule 41(a)(1), but must file a motion for voluntary dismissal under Rule 41(a)(2). Unlike a Rule 41(a)(1) notice of dismissal, a Rule 41(a)(2) motion requires court approval." (citations omitted)).

A Rule 41(a)(2) motion for voluntarily dismissal "is addressed to the district court's sound discretion." *Stevedoring Serv. of Am. v. Armilla Intern. B.V.*, 889 F.2d 919, 921 (9th Cir.1989). "A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a

1 defendant can show that it will suffer some plain legal prejudice as a result.” *Smith v. Lenches*,  
2 263 F.3d 972, 975 (9th Cir.2001). “ ‘[L]egal prejudice’ means ‘prejudice to some legal interest,  
3 some legal claim, some legal argument.’ ” *Id.* at 976 (quoting *Westlands Water Dist. v. United*  
4 *States*, 100 F.3d 94, 97 (9th Cir.1996)).

5 Accordingly, Defendants are directed to file a response or statement of non-opposition to  
6 the notice within fourteen (14) days of the date of this order. Alternatively, the parties may file a  
7 stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

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9 IT IS SO ORDERED.

10 Dated: **April 15, 2021**

11 /s/ Eric P. Gray  
12 UNITED STATES MAGISTRATE JUDGE  
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